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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,135	10/12/2001	Thomas R. Stanley	TPP:656 US	9536

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,135

Applicant(s)

STANLEY ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23-25, 28, 29, 37, 40 and 41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 23-25, 28, 29, 37, 40 and 41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment (paper no. 9) dated 4-3-03 and this action is final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8-12, 17-20, 23-25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,612,684 to Kollross.

Referring to claims 1 and 25, Kollross discloses an apparatus for automatically stuffing tubular food casing with food product comprising, a stuffing horn – at 12 which food product flows into tubular food casing deshirred from a shirred food casing stick on the stuffing horn, the stuffing horn including an input end of the stuffing horn being interconnected with a pressurized source of food product, a clipping device – at 18 for closing with a clip – 92 after being stuffed, the clipping device comprising a slot – between the jaws at 76,78 and 80,82 – see figure 5, for guiding the clip – 92 and an entry into the slot (a slot by its very nature inherently possesses an entry so that an object can be placed in the slot), a top – see figures 3-10, holding lengths of

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string having end portions secured together to form string loops - 34, the tap to be directed toward the clipping device - 18 for closing an end of the food casing so that a string loop - 34 is transferred directly from the tape into the entry into the slot - see figures 3-5, wherein the entry positioned in the slot and the tape is positioned relative to the entry, so that when the end of the food casing is being closed with the clip, the clip draws the loop to the casing and holds the loop to the food casing between a major portion of the loop and the secured together end portions of the string - see for example figures 1-11.

Referring to claim 2, Kollross discloses a plurality of rolls including a tape supply roll, a drive roll, a take-up roll and at least one intermediate roll - 100 which is proximate the entry so that the secured together end portions of a string project from the tape into the entry into the slot as the tape passes around the intermediate roll - 100 which is proximate the entry so that the secured together end portions of a string loop project from the tape into the entry into the slot as the tape passes around the intermediate roll - see for example figures 3 and 7. The supply roll, drive roll, and take-up roll are inherent in that as seen in figures 3 and 7 the tape is supplied to roll - 100 and then is removed in a path from roll - 100, so therefore a supply roll and a take-up roll are needed and a drive roll is needed to power the supply, intermediate and take-up rolls so that the loops are conveyed to the clipping device - at 18.

Referring to claim 3, Kollross discloses a means for driving the drive roll to pull the tape from the supply roll around the intermediate roll - the drive means is inherent since the drive roll is powered by some means to drive the loop forming mechanism.

Referring to claims 4 and 28, Kollross discloses an edge - the end portion of jaw - 76 as seen in figures 3 and 7, for catching secured together end portions of a string loop - 34 as it



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passes around the intermediate roll to cause the secured together portions of the string to protrude from the tape into the entry to the slot and to assist in removal of the string loop – 34 from the tape – see for example figures 3 and 7.

Referring to claim 6, Kollross discloses loop is secured via a knot – see figures 1-11.

Referring to claim 8, Kollross discloses means – see figure 9, is provided to radially compress the stuffed food casing after being stuffed to cause a restricted location along a stuffed food casing length, the clipping device being configured to clip the casing at the restricted location – see for example figures 1-11.

Referring to claim 9, Kollross discloses a punch – see figures 3 and 9 is provided for forcing a clip against a clip anvil to bend the clip around the restricted portion of the casing in the form of a helix – see for example figures 1-11.

Referring to claims 10 and 18 Kollross discloses two punch surfaces – see figures 3 and 9-10 are provided to apply two spaced apart clips to the restricted location in the shape of mirror image helixes and a knife – 94 is provided to cut the casing between the applied clips – at 92 – see for example figures 1-11.

Referring to claims 11 and 20, Kollross discloses a housing is provided having a channel for travel of the punch and an external punch slot is provided for easy access to the channel for easily replacing the punch – see for example figures 1-11.

Referring to claims 12, 19 and 24, Kollross discloses access to the knife is provided so that it can be easily replaced without disassembly of the clipping device – see for example figures 1-11.

Referring to claim 17, Kollross discloses an apparatus for automatically stuffing tubular food casing with food product which comprises a stuffing horn – at 12 which food product flows into tubular food casing deshirred from a shirred food casing stick on the stuffing horn, an input end of the stuffing horn being interconnected with a pressurized source of food product, a clipping device – at 18 for closing stuffed food casing with a clip - 92, wherein means is provided to radially compress – see figures 3 and 9, the stuffed food casing to cause a restricted location along a stuffed food casing length, the clipping device being configured to clip the casing at the restricted location and a punch comprising two punch surfaces – (the surfaces which are in contact with the two clips – 92 – see figures 3 and 9-10) and anvil are provided and configured so that the punch forces two spaced apart clips against the anvil to bend the two clips around the restricted location of the casing in the form of helixes – see for example figures 1-11.

Referring to claim 23, Kollross discloses an apparatus for automatically stuffing tubular food casing with food product which comprises a stuffing horn – at 12 which food product flows into tubular food casing deshirred from a shirred food casing stick on the stuffing horn, an input end of the stuffing horn being interconnected with a pressurized source of food product, a clipping device – at 18 for closing stuffed food casing with a clip - 92, wherein two punch surfaces are provided to apply two spaced clips to the restricted location in the shape of mirror image helixes and a cutting means – 94 is provided to cut the casing between the applied clips – see for example figures 1-11.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,949,429 to Stanley. Stanley discloses an apparatus for automatically stuffing tubular food casing with food product which comprises a stuffing horn – at 14 through which food product

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flows into tubular food casing deshirred from a shirred food casing stick on the stuffing horn, an input end of the stuffing horn being interconnected with a pressurized source of food product, wherein the stuffing horn – at 14 is interconnected with a pressurized source of food product through a food product cut-off valve at 6 comprising a tapered valve seat – at 7 and 25 having a frustoconical tapered side wall and having opposing inlet and outlet openings in the side wall – see for example figure 2, the valve further comprising a frustoconical plastic insert – at 6 tapered to mate with the tapered valve seat for insertion into the valve seat, the plastic insert having a longitudinal axis and a hole passing through the insert perpendicularly to the longitudinal axis in a position such that it may be rotated to cause the hole to align with the opposing inlet and outlet openings to permit food product to pass through the inlet opening in the valve seat, through the hole in the insert and through the outlet opening in the valve seat to the stuffing horn and may also be rotated to cause the hole to become misaligned with the inlet and outlet openings to impede the flow of food product to the stuffing horn – see for example figures 1-3.

Claims 21 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,885,150 to Whittlesey. Whittlesey discloses an apparatus for automatically stuffing tubular food casing with food product which comprises a stuffing horn through which food product flows into tubular food casing deshirred from a shirred food casing stick on the stuffing horn, an input end of the stuffing horn being interconnected with a pressurized source of food product, a clipping device for closing stuffed food casing with a clip – 16, 18, wherein a conveyor – see figures 2-3 is provided to remove stuffed food product from the vicinity of the clipping device after stuffed food casing is closed, the conveyor comprising a conveying belt defining a conveying surface having a variable length, the belt traveling over slacker idler rollers – at 50

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and 68 beneath the conveying surface of the belt that permit the length of the conveying surface to be extended and retracted to extend and reduce a space between the clipping device and the conveying surface may be enlarged and reduced by retracting and extending the conveying surface length – see for example figures 1-4 and columns 1-5.

Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,156,567 to Gammon et al. Gammon et al. discloses an apparatus for automatically stuffing a tubular food casing with food product, the apparatus comprising, a stuffing horn – see figures 7-8, through which food product flows into a tubular food casing – 56 deshirred from a shirred food casing stick on the stuffing horn, a clipping device – at 58 for closing with a clip the food casing after being stuffed, the clipping device comprising a slot for guiding the clip toward the food casing, a loop – at 16 for hanging the food casing after the food is stuffed and an air source – (the compressed air used for the pneumatic system described in columns 2-3), positioned to direct the loop into the slot such that as the clip is directed toward the food casing, the clip draws the loop to the food casing and holds the loop to the food casing

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



Claims 5 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 5,842,915 to Plewa et al. or FR Patent No. 2576751. Kollross further discloses the secured together end portions of the string loop are directed into the slot and capturing both end portions of the string between the clip end and the casing. Kollross does not disclose an air source directs the loop into the slot. Plewa et al. and the French patent do disclose an air source directs the loop into the slot – see for example figures 1-8 and columns 1-7 of Plewa et al. and 1-5 and the English Abstract of the French patent. Therefore it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross and add the air source to direct the loop of Plewa et al. or the French patent, so as to ensure the loop is moved into the correct position thus making the device as efficient as possible.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross as applied to claim 1 above, and further in view of U.S. Patent No. 4,949,429 to Stanley. Kollross does not disclose an input end of the stuffing horn is interconnected with a pressurized source of food product through a food product cut-off valve comprising a tapered valve seat having a frustoconical tapered side wall and having opposing inlet and outlet openings in the side wall, the valve further comprising a frustoconical plastic insert tapered to mate with the tapered valve seat for insertion into the valve seat, the plastic insert having a longitudinal axis and a hole passing through the insert perpendicularly to the longitudinal axis in a position such that it may be rotated to cause the hole to align with the opposing inlet and outlet openings to permit food product to pass through the inlet opening in the valve seat, through the hole in the insert and through the outlet opening in the valve seat to the stuffing horn and may also be rotated to cause

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the hole to become misaligned with the inlet and outlet openings to impede the flow of food product to the stuffing horn. Stanley does disclose an input end of the stuffing horn – 14 is interconnected with a pressurized source of food product through a food product cut-off valve – at 6 comprising a tapered valve seat – at 7 and 25 having a frustoconical tapered side wall and having opposing inlet and outlet openings in the side wall – see for example figure 2, the valve further comprising a frustoconical plastic insert – at 6 tapered to mate with the tapered valve seat for insertion into the valve seat, the plastic insert having a longitudinal axis and a hole passing through the insert perpendicularly to the longitudinal axis in a position such that it may be rotated to cause the hole to align with the opposing inlet and outlet openings to permit food product to pass through the inlet opening in the valve seat, through the hole in the insert and through the outlet opening in the valve seat to the stuffing horn and may also be rotated to cause the hole to become misaligned with the inlet and outlet openings to impede the flow of food product to the stuffing horn – see for example figures 1-3. Kollross as modified by Stanley does not disclose the insert is made of plastic, however this is an obvious matter of design choice since applicant does not state that making the insert of plastic solves a particular problem or is used for any particular purpose as opposed to other materials. Further Kollross as modified by Stanley does not disclose the hole passing through the insert is exactly perpendicular to the longitudinal axis of the valve seat as seen in figure 2 of Stanley, however it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross as modified by Stanley and add the hole passing through the insert is perpendicular to the longitudinal axis of the valve seat since this is an obvious matter of design choice since the apparatus of Kollross as modified by Stanley would perform equally as well with the hole being perpendicular to the

longitudinal axis as seen in figure 2 of Stanley. Therefore it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross and add the cut-off valve of Stanley, so as to make the apparatus adjustable and easier to control since the flow of the sausage is controlled by the valve.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross as applied to claim 1 above, and further in view of U.S. Patent No. 4,437,209 to Duroyon. Kollross further discloses the clipping device is of sufficiently lightweight and is driven by a sufficient power source to obtain a clipping cycle – see for example columns 1-7. Kollross does not disclose the clipping device is of sufficiently lightweight and is driven by a sufficient power source to obtain a clipping cycle of less than 3 seconds. Duroyon does disclose the clipping cycle is less than 3 seconds – see for example column 9 lines 57-68 and column 10 lines 1-5. Therefore it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross and add the clipping cycle time less than 3 seconds of Duroyon, so as to allow for the apparatus to be more efficient in that it can close off more sausage casings in a short amount of time.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross as applied to claim 1 above, and further in view of U.S. Patent No. 5,885,150 to Whittlesey or GB Patent No. 1576718 to Hardy.

Referring to claim 14, Kollross further discloses a conveyor – 22 is provided to remove stuffed food product from the vicinity of the clipping device – at 18 after stuffed food casing is closed, the conveyor comprising a conveying belt and the belt traveling over rollers beneath the conveying surface of the belt – see for example figures 1-11. Kollross does not disclose the belt travels over slacker idler rollers so as to be extended and retracted to extend and reduce a space

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between the clipping device and the conveying surface. Whittlesey and Hardy do disclose a conveying belt – 24,26 of Whittlesey and – 16,18 of Hardy, the belt travels over slacker idler rollers – at 50 and/or 66 of Whittlesey – and see figures 2a-2e of Hardy, so as to be extended and retracted to extend and reduce a space between the device and the conveying surface – see for example figures 1-4 and columns 1-5 of Whittlesey and figures 2a-2e of Hardy. Therefore it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross and add the retractable conveyor of Whittlesey or Hardy, so as to make the apparatus more flexible in that it can handle sausages of differing sizes.

Referring to claim 15, Kollross further discloses gatherers – see figure 5, to gather a stuffed food casing to form a radial restriction in the stuffed food casing. Kollross further discloses a conveyor drive cylinder – proximate 22. Kollross does not disclose the conveyor drive cylinder causes the conveyor conveying surface length to retract to increase the space when the gatherers are operating and to cause the conveying surface length to extend to reduce the space and place the conveying surface near the clipping device when the gatherers are dormant. Whittlesey or Hardy further discloses the conveyor drive cylinder – at 50,52,66,68 of Whittlesey or – see figures 2a-2e of Hardy, causes the conveyor conveying surface length to retract to increase the space when the gatherers are operating and to cause the conveying surface length to extend to reduce the space and place the conveying surface near the clipping device when the gatherers are dormant. – see for example figures 1-4 and columns 1-5 of Whittlesey and figures 2a-2e of Hardy. Therefore it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross as modified by Whittlesey or Hardy and further add the conveyor

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extending and retracting in relation to the clipping device of Whittlesey or Hardy, so as to make the apparatus more flexible in that it can handle sausages of differing sizes.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,766,713 to Evans in view of Hardy. Evans discloses an apparatus for automatically stuffing tubular food casing with food product, the apparatus comprising, a stuffing horn – at 22 through which the food product flows into a tubular food casing – 28 deshirred from a shirred food casing stick on the stuffing horn, a clipping device – at 33-35 for closing the food casing after being stuffed and a conveyor – at 56 to remove the food product casing from the vicinity of the device after the food casing is stuffed and closed wherein the conveyor comprises a conveying belt defining a conveying surface which is variable and one or more slacker idler rollers over which the conveyor belt travels wherein the one or more slacker idler rollers are movable to permit the length of the conveying surface to be extended or retracted wherein a space between the device for closing the food casing and the conveying surface may be enlarged and reduced by retracting and extending the conveying surface length. Evans does not disclose the conveyor belt has a variable length. Hardy does disclose the conveyor belt – at 16-18 has a variable length – see figures 2a-2e. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Evans and add the conveyor belt with variable length of Hardy, so as to allow for the conveyor to be moved into various positions depending on the size of the device to be conveyed.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley. Stanley discloses a method for automatically stuffing tubular food casing with food product which comprises causing food product to flow through a stuffing horn into tubular food casing

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deshirred from a shirred food casing stick on the stuffing horn, an input end of the stuffing horn being interconnected with a pressurized source of food product, wherein the stuffing horn – at 14 is interconnected with a pressurized source of food product through a food product cut-off valve at 6 comprising a tapered valve seat – at 7 and 25 having a frustoconical tapered side wall and having opposing inlet and outlet openings in the side wall – see for example figure 2, the valve further comprising a frustoconical plastic insert – at 6 tapered to mate with the tapered valve seat for insertion into the valve seat, the plastic insert having a longitudinal axis and a hole passing through the insert perpendicularly to the longitudinal axis in a position such that it may be rotated to cause the hole to align with the opposing inlet and outlet openings to permit food product to pass through the inlet opening in the valve seat, through the hole in the insert and through the outlet opening in the valve seat to the stuffing horn and may also be rotated to cause the hole to become misaligned with the inlet and outlet openings to impede the flow of food product to the stuffing horn – see for example figures 1-3. Stanley does not disclose the insert is made of plastic, however this is an obvious matter of design choice since applicant does not state that making the insert of plastic solves a particular problem or is used for any particular purpose as opposed to other materials. Further, Stanley does not disclose the hole passing through the insert is exactly perpendicular to the longitudinal axis of the valve seat as seen in figure 2 of Stanley, however it would have been obvious to one of ordinary skill in the art to take the apparatus of Stanley and add the hole passing through the insert is perpendicular to the longitudinal axis of the valve seat since this is an obvious matter of design choice since the apparatus of Stanley would perform equally as well with the hole being perpendicular to the longitudinal axis as seen in figure 2 of Stanley.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross in view of Gammon et al. or the French patent. Kollross discloses an apparatus for automatically stuffing a tubular food casing with food product the apparatus comprising, a stuffing horn – 12 through which food product flows into a tubular food casing deshirred from a shirred food casing stick on the stuffing horn, a clipping device – 18 for closing with a clip the food casing after being stuffed, the clipping device comprising a slot for guiding the clip toward the food casing, a loop for hanging the food casing after the food is stuffed and the loop is positioned in the slot such that the clip is directed toward the food casing, the clip draws the loop to the food casing and holds the loop to the food casing. Kollross does not disclose an air source positions the loop. Gammon et al. and the French patent disclose an air source positions the loop – see for example figures 1-9 and columns 2-3 of Gammon et al. and figures 1-5 and the English abstract of the French patent. Therefore it would have been obvious to one of ordinary skill in the art to take the apparatus of Kollross and add the air source to direct the loop of Gammon et al. or the French patent, so as to ensure the loop is moved into the correct position thus making the device as efficient as possible.

Response to Arguments

4. Regarding claim 1, the claim language does not state that the loop is to be flexible and as seen in figures 9-10 the loop is flexible in that it can be bent into different positions as it is moved.

Regarding claim 6, the Kollross reference does disclose that the end portions are secured together by a knot as seen in figures 3 and 9-10. The ends of the loop are attached to a disc, but they are tied together about the disc and therefore read on the claimed invention.

Regarding claims 9, 17-18 and 23, the Kollross reference does disclose as seen in figure 9, mirror image clips to double clip the casing and to sever the casing between the clips. As seen in figure 9, the Kollross reference discloses two clips – 92 being applied to the casings where the jaws – 76,78 and 80,82 pinch the casing with a knife – 94 severing the casing between the clips – 92 and with the clips – 92 being helical and of the same shape.

Regarding claims 21 and 40, the Whittlesey reference discloses a variable length conveyor in that the length of the conveyor belt varies between certain heights thus changing the horizontal length traveled. Further the claims do not state that the conveyor belt is telescopic and this has no bearing on the patentability of the claims.

Referring to claims 5 and 29, the Plewa et al. reference discloses an air source used to direct an article being the tag into a slot.

Referring to claim 7, the Stanley reference does disclose a food product cutoff valve in that the device has one inlet and two outlets with one of the outlets being cutoff from the food product at any given time, with the elements of the Stanley reference disclosing the elements of applicant's invention as claimed.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the

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time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching, suggestion or motivation to combine the references is found in the knowledge generally available to one of ordinary skill in the art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.



PETER M. POON
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